

JIN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

U S OCT 2 2 2002

Michael N. Milby, Clerk

In Re ENRON CORPORATION  
SECURITIES, DERIVATIVE and  
"ERISA" LITIGATION

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MDL 1446

MARK NEWBY, ET AL.,

Plaintiffs

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§

VS.

CIVIL ACTION NO. H-01-3624 ✓  
and CONSOLIDATED CASES

ENRON CORPORATION, ET AL.,

Defendants

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PAMELA M. TITTLE, On Behalf of  
Herself and A Class of Persons  
Similarly Situated, ET AL.,

Plaintiffs,

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§

VS.

CIVIL ACTION NO. H-01-3913  
and CONSOLIDATED CASES

ENRON CORP., an Oregon  
Corporation, ET AL.,

Defendants.

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**MICHAEL J. KOPPER'S REPLY IN SUPPORT OF HIS OBJECTION TO JOINT  
MOTION ESTABLISHING DOCUMENT DEPOSITORY**

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW Michael J. Kopper ("Kopper"), a defendant in the *Tittle* litigation, and  
files this reply in support of his limited objection to Plaintiffs' Joint Motion to Enter Order  
Establishing Document Depository.

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1. Kopper, as an individual named as a defendant in the *Tittle* litigation, has filed a limited objection to the proposed document depository order because it unnecessarily seeks to require Kopper (and presumably other individuals) to incur substantial costs beyond those routinely incurred by a party responding to requests for production of documents. In response, the Plaintiffs and the Bank Defendants do not deny that the proposed order imposes cash on individual defendants that greatly exceed those under the Federal Rules, but argue instead that the order will be an overall benefit to Kopper.<sup>1</sup> Although Kopper appreciates the effort by third parties to determine what is in his benefit, such statements do not avoid the plain fact that the proposed order, if adopted by the Court, may require an individual party producing documents to incur more expense than that which he or she would normally incur under FED. R. CIV. P. 34. As a result, Kopper respectfully urges this Court to enter the order with his proposed limited changes, which would permit individual defendants the option of producing hard copies of documents to the document depository.

2. The Plaintiffs and the Bank Defendants also assert that Kopper has miscalculated the cost of compliance with the proposed order,<sup>2</sup> but the lack of clarity surrounding the anticipated financial obligations that the proposed order would impose on individual defendants, such as Kopper, supports Kopper's limited objection to the entry of the order as proposed.

3. Kopper's proposed change would give individual defendants the option of producing hard copies. If the costs of copying, imaging, and indexing documents through the document depository proves to be the same as producing hard copies of the same quantity of

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<sup>1</sup>According to Plaintiffs, the benefits to Kopper are "incalculable." Plaintiffs' Response to Kopper's Objection to Plaintiffs' Joint Motion to Enter Order Establishing Document Depository, at 1. The Bank Defendants assert that Kopper will "benefit disproportionately" under the proposed order. Bank Defendants' Reply to Objections of Kopper and F&A Plaintiffs to the Proposed Document Depository Order at 2.

documents (which Kopper finds unlikely), then the language suggested by Kopper would provide the necessary flexibility to produce documents either way without undue expense. Neither the Plaintiffs nor the Bank Defendants deny that the proposed order would require individual defendants to shoulder the entire up-front cost not only of collecting documents for inspection, but of generating *computer images* and *indexes* of documents he would be required to produce, subject to a right to reimbursement for only 50 percent of those costs. *See* Proposed Order Establishing Document Depository at IV(A)(1), VIII(B). As a result, Kopper respectfully suggests that if the Court is inclined to enter the proposed document depository order, it could do so with the following limited changes, and avoid the cost burden on individual defendants, as follows:

- Page 5, footnote 1: Insert the sentence “Individual defendants served with discovery requests may elect, in lieu of the Required Format, to produce hard copies only to the Depository.”
- Page 8, paragraphs V(1) and V(3): Insert the words “Except as provided above” before the words “Each Producing Party” etc.

WHEREAS, PREMISED CONSIDERED, Kopper respectfully requests that the Court, should it choose to enter the proposed document depository order, do so only after interlining the suggested changes set out above.

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<sup>2</sup>The Plaintiffs (but not the Bank Defendants) claim that Kopper has attached an incorrect price schedule. However, Kopper is unaware of any subsequent price schedule governing the proposed document depository. The Plaintiffs do not attach a copy of the alleged correct price schedule to their response.

Respectfully submitted,

By: 

Eric J.R. Nichols

State Bar No. 14994900

S.D. Tex. I.D. No. 13066

1221 McKinney Street, Suite 4500

Houston, Texas 77010-2010

Telephone: (713) 951-3700

Telecopier: (713) 951-3720

Attorney-in-Charge for Defendant  
Michael J. Kopper

OF COUNSEL:

Felicia Harris Kyle

Federal I.D. No. 13838

State Bar No. 24002438

Jason Luong

Federal I.D. No. 29858

State Bar No. 24026996

BECK, REDDEN & SECREST

A Registered Limited Liability Partnership

1221 McKinney Street, Suite 4500

Houston, Texas 77010-2010

Telephone: (713) 951-3700

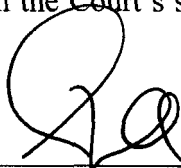
Telecopier: (713) 951-3720

ATTORNEYS FOR DEFENDANT

MICHAEL J. KOPPER

**CERTIFICATE OF SERVICE**

This pleading was served, in compliance with the Court's service order, on October 22, 2002.



Eric J.R. Nichols